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May 16, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
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445 12th Street, S.W., TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Proposed Rulemaking Regarding the Review of the
Commission's Rules and Policies Affecting the Conversion to Digital
Television in MM Docket No. 00-39

Dear Ms. Salas

On behalf of WLNY-TV Inc., licensee of television station WLNY(TV), Riverhead, New York, there are transmitted herewith an original and four copies of its Comments in the above-captioned proceeding regarding the review of the Commission's rules and policies affecting the conversion to digital television.

If you have any questions concerning the Comments, please direct them to the undersigned attorney for WLNY-TV Inc.

Very truly yours


Ronald A. Siegel

Enclosures

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BEFORE THE

Federal Communications Commission

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MAY 16 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 00-59

In the Matter of)
)
Review of the Commission's)
Rules and Policies)
Affecting the Conversion)
to Digital Television)

To: The Commission

COMMENTS OF WLNY-TV INC.

WLNY-TV Inc., licensee of television station WLNY(TV), Riverhead, New York, by its attorneys, hereby submits its Comments in response to the Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding involving the review of the Commission's rules and policies affecting the conversion to digital television.

Introduction

Station WLNY, a full power independent television station licensed to the community of Riverhead on Long Island, New York, operates on analog channel 55 and holds a construction permit for its assigned digital channel 57. Station WLNY, which broadcasts a general entertainment/news/sports format, is a unique and substantial source of local television programming not only on Long Island but in the New York DMA "tri-state" (NY/NJ/CT) area, as well.

Both the analog channel (55) and digital channel (57) assigned to station WLNY lie outside of the core spectrum (channels 2-51) available for permanent, post-transition DTV operations. Both channels, 55 and 57, must be relinquished at the end of the transition from analog to digital operations. At the present time, because of the high degree of congestion in the New York area, there are no available channels in the core spectrum that can serve as a substitute for station WLNY's assigned DTV channel 57. Consequently, permanent DTV channel availability for station WLNY cannot be determined until such time as other television stations with two assigned channels, one analog and one DTV (so-called "paired" channels), elect which one of these channels they will use for post-transition DTV operations and which one they will relinquish to the Commission. Because channel 57 is only a temporary, out-of-core DTV channel assignment, station WLNY applied for and was granted a construction permit for that channel which authorized limited technical facilities that would provide the necessary coverage of the station's city of license but overall would cover a significantly smaller area than full replication facilities.^{1/}

Summary of Regulatory Position

The Commission should require television stations with "paired" channels to elect their post-transition DTV channels at the earliest reasonable date. The election date for television stations generally should be January 1, 2004 but, in markets where there are full power television stations lacking post-transition DTV channels because their analog and digital channels both lie

^{1/} An maximization application to increase the effective radiated power of station WLNY is pending.

outside of the core spectrum, the election date should be even earlier, *e.g.*, January 1, 2003. In no event, however, should the election date be later than the May 1, 2004 date proposed by the Commission. Full power television stations whose analog and digital channels lie outside of the core spectrum should be accorded the highest priority, *i.e.*, first choice, in securing in-core DTV channels from the relinquished channels because such channels are necessary for post-transition DTV operations. The broadcaster, rather than the Commission, should determine which channel is best suited for the individual station subject to Commission review. Any replication or enhanced principal community coverage requirements adopted by the Commission should apply solely to a television station's operation on its permanent, in-core DTV channel and not to a television station's operation on its temporary, out-of-core DTV channel.

Regulatory Position

According to the Commission, there are 17 full power television stations, including WLNY, whose analog and digital channels both lie outside of the core spectrum (Notice, para. 35).^{2/} These television stations must find and move to a new in-core channel after the transition in order to operate in the DTV mode. The Commission recognized the need to insure that these stations can be provided with new in-core channels for post-transition DTV operations, as well

^{2/} These 17 stations are located in Riverhead, NY (WLNY), Riverside, CA, San Mateo, CA, Stockton, CA, Aurora, IL, Joliet, IL, Springfield, MA, Newark, NJ, Vineland, NJ, Bethlehem, PA, Arecibo, PR (2 stations), Caguas, PR, Naranjito, PR, Providence, RI, Lake Dallas, TX and Fairfax, VA. Report and Order In the Matter of Establishment of a Class A Television Service, MM Docket No. 00-10 (FCC 00-115, adopted March 28, 2000, released April 4, 2000), para. 57, footnote 107.

as the need for flexible and expeditious procedures to accommodate the transition of these stations from analog to digital operations.

The Commission requested comment on the deadline by which TV stations with “paired” channels must elect their post-transition DTV channels. In order to accommodate television stations lacking in-core analog and digital channels, the Commission should require that this election be made at the earliest reasonable date, *i.e.*, January 1, 2004 or preferably earlier.^{3/} In no event, however, should this election date be later than the May 1, 2004 proposed by the Commission in its Notice (Notice, para. 38). The critical point is that television stations with analog and digital channels outside of the core must know at an early date what channels will eventually become available for their use so that they will have sufficient time to plan their DTV facilities, including possible site moves, order equipment and arrange for construction. The problem is compounded in the case of station of WLNY because it is located in the highly competitive New York television market. Thus, while its competitors with in-core channel assignments can engage in planning for and promotion of their DTV operations on specific channels, station WLNY cannot do so because of the lack of a post-transition DTV channel assignment. The lack of knowledge as to its post-transition DTV channel assignment could also impair the ability of station WLNY to achieve carriage on cable systems and other multichannel video distribution systems in the market because the system operators could not plan for carriage

^{3/} The Commission can, for example, establish a date earlier than January 1, 2004 in those markets where the 17 television stations, with analog and digital channels outside of the core, are located (see footnote 2, *supra.*). A reasonable date for the election in these markets would be January 1, 2003 in order to allow the 17 affected stations sufficient time for planning and implementation of their DTV proposals.

of the station's DTV signal on a specific channel (*e.g.*, planning for channel lineups, digital converter equipment at cable headends and so on). While the establishment of an earlier election date will not eliminate the burdens associated with DTV conversion imposed upon station WLNY and other similarly situated stations, it may serve to help to minimize those burdens.

The Commission also requested comment on the system of priorities that should be established for stations seeking the channels reclaimed by the Commission. For the purpose of establishing priorities, the Commission should distinguish between full power television stations which must find a new channel for post-transition DTV operations and stations which already have at least one in-core channel (DTV or analog which can be converted to DTV) available for such DTV operations. Full power television stations which, because of their out-of-core analog and digital channel assignments, must, find and move to a new in-core channel for post-transition DTV operations should be afforded the highest priority, *i.e.*, first choice, in securing in-core DTV channels. This priority should extend over all other television stations, both full power and low power (Class A or otherwise), which may desire alternative channels for varied reasons but are not required to find new channels for DTV operations.^{4/}

^{4/} WLNY-TV Inc. is also the licensee of three low power television (LPTV) stations, two of which are authorized on channels outside of the core spectrum. These out-of-core channels were assigned as the result of the grants of displacement applications. There were no in-core channels available for use by these LPTV stations. This category of LPTV stations should be afforded high priority, second only to full power television stations whose analog and digital channels are outside of the core, in securing in-core channels. Such LPTV stations must find and move to new in-core channels to continue to operate after the transition.

The Commission should adopt procedures to insure that station WLNY and other similarly situated stations which are required to move to new in-core DTV channels can, in fact, obtain such channels and convert to DTV operations in a timely and efficient manner. First, promptly after television stations make their DTV channel elections, the Commission should issue a public notice listing the channels to be relinquished and their locations. The Commission should then open an exclusive filing window for those full power television stations whose analog and digital channels lie outside the core spectrum.^{5/} The need for streamlined procedures to accommodate these stations is particularly evident in the case of station WLNY. Station WLNY is the only television station licensed to Riverhead, New York and its assigned channels 55 (analog) and 57 (digital) are the only two channels allotted to Riverhead. Therefore, it would be necessary for an in-core channel allotted to New York City or another community in the market to be moved to Riverhead for DTV use by station WLNY. The Commission should adopt a simple one step process, rather than a two step rulemaking and application process, to allot the channel to Riverhead and authorize station WLNY's use of it. However, if the Commission determines that a two step rulemaking and application process is required, the Commission should conduct a streamlined proceeding to expedite the allotment of the channel to Riverhead and the authorization for station WLNY to use that channel.

The broadcaster, rather than the Commission, should determine which DTV channel (among those to be reclaimed by the Commission) is best suited for the individual station. The

^{5/} If the Commission opens a filing window for a broader category of stations, it should make it clear that full power television stations with analog and digital channel assignments outside of the core will be given first choice in channel selection over all others in the case of a conflict.

broadcaster is in the best position initially to make this determination which may involve varied operational considerations, including possible site moves, to most effectively serve the public. Any such channel selection would, of course, be subject to Commission review to insure that the use of the spectrum is efficient and serves the public interest.

The Commission requested comment on whether to implement replication and enhanced principal community coverage DTV requirements. Whatever replication and/or enhanced principal community coverage requirements the Commission may adopt, such requirements should apply solely to a television station's operation on its permanent, in-core DTV channel and not to a television station's operation on its temporary, out-of-core DTV channel. The application of any such requirements to the latter category of stations would require wasteful expenditures for increased DTV facilities and operations outside of the core spectrum which ultimately will have to be abandoned following the transition period.^{6/}

^{6/} The Commission should pursue a liberal policy in considering and acting upon a request of a station with analog and digital channel assignments both outside of the core spectrum to defer the construction of its DTV station beyond the current construction deadline (*e.g.*, May 1, 2002 in the case of station WLNY) or convert its operations directly to DTV at the end of the transition. A presumption in favor of such extension or deferment is warranted because implementation of DTV operations on a temporary, out-of-core channel in strict compliance with the current construction schedule could involve unnecessary expense and cause undue hardship in light of the need to move again to a new channel. The station should have the option to meet its current construction deadline, but not be required to do so.

Conclusion

As the Commission has recognized, full power television stations whose analog and digital channel assignments are outside of the core spectrum and which must find in-core DTV channels to continue to operate in the post-transition era are confronted with unique and complex problems for reasons not of their own doing. The Commission has a responsibility to address these problems and adopt rules and procedures designed to facilitate, to the maximum extent possible, the transition of these stations to in-core DTV operations. The proposals advanced herein by station WLNY would, in our view, assist in achieving this goal.

Respectfully submitted

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Dated: May 16, 2000